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No. ...-...

IN THE

Supreme Court of the United States

October Term, 1982

GOLDEN STATE TRANSIT CORPORATION d/b/a YELLOW CAB OF LOS ANGELES,

Petitioner,

vs.

CITY OF LOS ANGELES,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI.

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Question Presented.

Pursuant to a franchise from the City of Los Angeles, petitioner has operated the largest taxicab company in Los Angeles, California. Prior to the expiration date of petitioner's and twelve other taxicab companies' franchises, petitioner and the others made timely application for a franchise renewal. The City's Department of Transportation determined that petitioner was in full compliance with all terms and conditions of its franchise and recommended to the City's Board of Transportation that petitioner be awarded a long-term renewal. Thereafter, the City's Board of Transportation Commissioners also recommended the long-term renewal of petitioner's franchise to the Los Angeles City Council's Committee on Transportation and Traffic, which also recommended such a renewal to the City Council of Los Angeles. Yet the City Council voted to deny petitioner's franchise because of an ongoing labor dispute between petitioner and its Teamster drivers. Upon an application by petitioner for injunctive relief, the United States District Court, Central District of California, issued a preliminary injunction, inter alia, restraining and enjoining the City from terminating petitioner's franchise and from otherwise interfering with petitioner's collective bargaining with the Teamsters. On appeal by the City of Los Angeles, the Court of Appeals held that there was ample evidence to support a finding that by threatening to deny and ultimately denying renewal of petitioner's franchise, the City had deprived petitioner of an economic weapon vis-a-vis its Teamster drivers in their labor dispute. However, the Court of Appeals vacated the District Court's preliminary injunction on the grounds that the National Labor Relations Act, 29 U.S.C.

§§151-168, did not preempt the City's power to deny petitioner's application for a franchise renewal, and that petitioner was not denied due process or equal protection of the laws because the City could justify its denial of petitioner's franchise renewal application on the belatedly asserted basis of increasing the compensation of taxicab drivers and thus contributing to higher levels of taxicab service. The question presented is:

> Whether federal preemption under the Supremacy Clause, and the Equal Protection and Due Process Clauses and of the Constitution, prohibit a municipal government from substantially and irreversibly influencing and interfering with a labor dispute through an arbitrary and capricious classification that denies a fully qualified business entity, as opposed to all others similarly situated, a valuable entitlement on the basis of increasing the bargaining power and the economic condition of organized labor, and whether a federal appellate court can misapply its own legal standards to vacate a lower court's injunction that preserved the status quo between the business entity and its union employees and had thus prevented the economic ruin of the business entity pending litigation?

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GOLDEN STATE TRANSIT CORPORATION d/b/a YELLOW CAB OF LOS ANGELES,

Petitioner,

vs.

CITY OF LOS ANGELES,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

Petitioner Golden State Transit Corporation d/b/a Yellow Cab of Los Angeles, respectfully prays that a Writ of Certiorari be issued to review the opinion of the United States Court of Appeals for the Ninth Circuit entered on September 7, 1982. That opinion vacated a preliminary injunction issued by the United States District Court for the Central District of California which had, inter alia, restrained and enjoined the City of Los Angeles, during the pendency of the action below from terminating petitioner's franchise to operate a taxicab service in Los Angeles, California, and from interfering with petitioner's collective bargaining with its Teamster drivers.

OPINIONS BELOW.

The decision of the Court of Appeals of which petitioner seeks review is reported at 686 F.2d 758; a copy is appended hereto as Appendix A. The opinion of the District Court is

reported at 520 F.Supp. 191. In support of the injunction, which was vacated by the Court of Appeals, the District Court entered findings of fact; a copy of these findings is appended hereto as Appendix B.

JURISDICTION.

The Court of Appeals' decision was filed September 7, 1982. On September 21, 1982, petitioner filed a motion in the Court of Appeals to stay the mandate and for an enlargement of time to file a petition for rehearing, or, in the alternative, for a stay of mandate pending a petition for a Writ of Certiorari in this Court. On September 29, 1982, the Court of Appeals denied petitioner's motion for enlargement of time to file a petition for rehearing but stayed the mandate until and including October 28, 1982 so that the petitioner could file this petition. This petition is being filed within the time permitted by the Court of Appeals in its order staying the mandate and within the time permitted by 28 U.S.C. §2101. This court has jurisdiction to review the Court of Appeals' decision by writ of certiorari pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED.

The Constitutional provisions involved are:

1. Supremacy Clause, U.S. Const., art. VI, §2. (Appendix C)
2. Equal Protection Clause, U.S. Const. Amend. 14, §1. (Appendix D)
3. Due Process Clause, U.S. Const. Amend. 14, §1. (Appendix E)

STATEMENT OF THE CASE.

Since 1977, Golden State Transit Corporation d/b/a Yellow Cab of Los Angeles ("Yellow Cab") has operated as the largest taxicab company in Los Angeles pursuant to a

franchise from the City of Los Angeles. The franchises of Yellow Cab and twelve other taxicab franchisees were due to expire on October 29, 1980. This expiration date for the franchisees was extended by the City to March 31, 1981.[1]

Yellow Cab had operated its business pursuant to a collective bargaining agreement with Teamsters Local 572. This agreement expired in October, 1980, but was renewed by interim agreements with the Teamsters until February 11, 1981. On that date, the Los Angeles City Council was scheduled to and did meet to consider whether to renew the franchises of Yellow Cab and the twelve other franchisees. Also, on that same date, Yellow Cab's Teamster drivers went on, and have remained on, strike. The dispute between Yellow Cab and its drivers concerns wages and benefits.

Yellow Cab has been engaged in extensive business operations in the City of Los Angeles and at Los Angeles International Airport, and train and bus terminals, transporting passengers who are arriving from or who are departing to various other states and countries thereby affecting interstate commerce.

Yellow Cab and the other franchisees had made timely application for renewal of their franchises. The City's Department of Transportation had determined in a report to the City's Board of Transportation that Yellow Cab was in full compliance with all terms and conditions of its franchise, and recommended a long-term renewal of that franchise. On September 4, 1980, and again on January 26, 1981, the City's Board of Transportation Commissioners also recommended long-term renewal of the Yellow Cab franchise to the City Council's Committee on Transportation and Traffic, which further recommended to the Los Angeles

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[1]Statement of the Case is based upon the findings of fact of the United States District Court, which are reproduced in full in Appendix B.

City Council that a long-term renewal franchise be granted Yellow Cab as well as other certain franchisees.

Because of the ongoing labor dispute between Yellow Cab and its Teamster drivers, the Joint Council of Teamsters on February 5, 1981, sent letters to the Mayor of Los Angeles and all City Council members advising them of the existence of the labor dispute.

At the City Council meeting of February 11, 1981, to consider whether to grant taxicab franchises to Yellow Cab and the other twelve applicants, the Council considered a report of its Committee on Transportation and Traffic, dated February 2, 1981, which recommended, inter alia, full-term renewals of four years for six franchisees, including Yellow Cab, and one-year renewals for the remaining franchisees. This report found that Yellow Cab and the other franchisees recommended for full-term renewals were "in compliance with all terms and conditions of the franchise."[2]

A representative of the Teamsters Union appeared at the Council meeting of February 11, 1981, and spoke on the dispute between Yellow Cab and its drivers. This Teamster representative recommended that Yellow Cab not receive a franchise because of the labor dispute. As a result, the City Council postponed consideration of Yellow Cab's franchise, even though the City Council granted full-term franchises to the other taxicab companies recommended for full-term renewals and adopted its Committee's report, including the finding that Yellow Cab was in full compliance with all terms and conditions of its franchise.

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[2]These terms and conditions included (a) payment of franchise fees; (b) compliance with all rules regarding leasings/contracting operations; (c) the furnishing of waybills and dispatch records; (d) maintenance of the minimum number of vehicles required by franchise; (e) compliance with Affirmative Action provisions of the franchise.

Subsequently, on February 17, 1981, the City Council again considered whether to grant Yellow Cab a full-term, four-year franchise. Representatives of the Teamsters Union again appeared at this meeting and again opposed a franchise for Yellow Cab because of the pending labor difficulties. This resulted in the City Council's grant to Yellow Cab of a limited franchise extension until April 30, 1981, on the condition that the City Council found before March 27, 1981, that the ordinance providing limited extensions was "in the best interest" of the City. No other franchise grant was subject to this condition.

On February 17, 1981, the same date as the City Council meeting, the Teamsters told Yellow Cab that if the labor dispute was not settled, Yellow Cab was "going to have a lot of trouble" renewing the franchise. Thereafter, on March 22, 1981, the Teamsters told Yellow Cab that the Teamsters were going to see that the Yellow Cab franchise was not going to be renewed unless Union demands were met.

Subsequently, on March 23, 1981, the City Council met to determine whether it was in the "best interest" of the City to allow Yellow Cab the limited extension of its franchise and invited parties to "express their views." Yellow Cab urged the Council to grant the extension to avoid intervening in the labor dispute. The Teamsters, on the other hand, urged denial of the extension and contended that Yellow Cab was bargaining in "bad faith" with the drivers and that to grant a further extension would not be in the drivers' best interest.

At this meeting, a Teamster representative recited to the City Council the purported "modest" demands that the Union was making on Yellow Cab and outlined what he considered to be Yellow Cab's purported intransigence. This Teamster representative reported that the striking workers

had voted "to endorse the position that the franchise not be extended . . ." He further stated that he hoped that the present Yellow Cab employees "would be hired by whatever successors" were established for Yellow Cab. Also, an AFL-CIO representative, representing "the brothers and sisters" of the Teamsters, reminded the City Council that there were 700,000 union members in Los Angeles County, and claiming that Yellow Cab was "acting in bad faith," further urged denial of the franchise to Yellow Cab.

Of import to the scenario surrounding the City Council's treatment of Yellow Cab's application for a franchise renewal is the fact that a municipal election was scheduled for Los Angeles on April 14, 1981. Numerous members of the City Council of Los Angeles were involved in campaigns for reelection. Indeed, the President of the City Council stated at the meeting on March 23, 1981, that there was a "very good possibility" that Yellow Cab's franchise would lapse if the labor dispute was not settled "by the end of the week . . ." Thereupon the City Council denied Yellow Cab not only a renewal of its franchise but even the limited extension.

At no point in the franchise renewal proceedings was Yellow Cab notified that any evidentiary or fact finding hearing would be held to determine whether its franchise should be renewed. Yellow Cab was never offered an opportunity to present sworn testimony, to offer admissible evidence, or to cross-examine opposing parties under oath. The only factual findings adduced from the proceedings were, as noted, that Yellow Cab was in full compliance with all of the terms of its franchise. Under the terms of its Charter, the City of Los Angeles was required to have adopted an ordinance of general application establishing the procedural standards for granting the renewal of franchises. There were and are no established procedural standards for

renewal of taxicab franchises which Yellow Cab failed to meet.

In view of the conduct of the City Council, Yellow Cab filed a complaint in the United States District Court, Central District of California, on March 30, 1981, seeking a temporary restraining order, a preliminary and permanent injunction, declaratory relief and money damages. The District Court's jurisdiction was premised upon 28 U.S.C. §1331 in that certain of its claims arose under Article XI, §1 of the United States Constitution as well as upon 29 U.S.C. §§141-167, 151-168, 171-197 and 42 U.S.C. §§1983, 1985 and 1986 and 28 U.S.C. §2201. Thereafter, the District Court issued a preliminary injunction restraining and enjoining the City of Los Angeles, inter alia, from terminating Yellow Cab's franchise or allowing it to expire and from interfering with Yellow Cab's collective bargaining with its Teamster drivers. In support of its preliminary injunction, the District Court entered numerous findings of fact (See App. B).

The City of Los Angeles appealed to the Ninth Circuit Court of Appeals, and, in an opinion filed on May 7, 1982, a panel of the Ninth Circuit vacated the District Court's preliminary injunction and held that the District Court abused its discretion in granting the injunctive relief because, although the balance of hardships tipped "sharply in Yellow Cab's favor" Yellow Cab did not have a fair chance of success on the merits. The Court of Appeals' rationale was that the City of Los Angeles had not impermissibly interfered in a labor dispute, that Yellow Cab's opportunity for a franchise renewal did not rise to the level of a constitutionally protected interest so as to invoke the Due Process Clause, and that the City's differential treatment of Yellow Cab vis-a-vis other renewal applicants did not violate the Equal Protection Clause. (See App. A).

The Court of Appeals' opinion vacating the injunction was and is in error.

REASONS FOR GRANTING THE WRIT.

1. THE COURT OF APPEALS' DECISION HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS REGARDING THE REVIEW OF A LOWER COURT'S ISSUANCE OF INJUNCTIVE RELIEF.

The District Court found that, absent injunctive relief, Yellow Cab faced both substantial and irreparable harm — the loss of its business — whereas the City, by continuing with a fully qualified franchisee could suffer no hardship whatever by the granting of an injunction. Thus, since the District Court determined that this case presented "serious questions of public policy," it granted an injunction in accordance with the Ninth Circuit's rulings in *Benda v. Grand Lodge of the International Association of Machinists & Aerospace Workers*, 584 F.2d 308, 315 (9th Cir. 1978) and *Aguirre v. Chula Vista Sanitary Service*, 542 F.2d 779 (9th Cir. 1976).

In *Benda*, the Ninth Circuit ruled that its earlier standard for injunctive relief, that is *either* a combination of probable success and the possibility of irreparable injury *or* that serious questions are raised and the balance of hardships tips sharply in favor of the litigant seeking an injunction, was not really two distinct tests, but rather "merely extremes of a single continuum." With respect to this continuum, the Ninth Circuit held:

> "If the balance of harm tips decidedly toward the plaintiff, then the plaintiff need not show as robust a likelihood of success on the merits as when the balance tips less decidedly."

Benda v. Grand Lodge of the International Association of Machinists & Aerospace Workers, supra, 584 F.2d at 315 (9th Cir. 1978).

In determining what a plaintiff must show as to the possibility of success on the merits when the balance of harm

tips decidedly toward the plaintiff, the Ninth Circuit reaffirmed its earlier view in the *Aguirre* case that the "irreducible minimum" would be met when "questions serious enough to require litigation" were presented.

In its opinion in this case, the Court of Appeals agreed that the balance of hardships tipped sharply in Yellow Cab's favor. For the purposes of this case, however, the Court of Appeals severed the continuum enunciated in *Benda* and *Aguirre* relative to a plaintiff's showing in support of an injunction, and inexplicably abandoned the irreducible minimum requiring only the presentation of questions serious enough to require litigation. In place of that aspect of the continuum, the court substituted the requirement that Yellow Cab carry the burden of showing a likelihood of success on the merits.

In the opinion of the Court of Appeals, the District Court abused its discretion in granting the preliminary injunction because Yellow Cab could not carry the burden, selectively applied in this case, of establishing that the City had unlawfully interfered with the ongoing collective bargaining between Yellow Cab and the Teamsters, or that the City's interference constituted a denial of due process and equal protection of the laws.

The Court of Appeals not only misapplied the Ninth Circuit's legal standard for injunctive relief, it further failed to follow well-established Ninth Circuit law in reviewing the sole issue before it, *i.e.*, whether the District Court had abused its discretion in granting the injunction. In fact, the Court of Appeals treated the issues in this case as if reviewing a District Court judgment on the merits. Contrary to the treatment of the injunction against the City of Los Angeles, the Ninth Circuit has consistently held that, unlike an appeal from a final decision on the merits, a more narrow standard of judicial review applies when an appellate court

is called upon to review the grant or denial of a preliminary injunction. See, *Miss Universe, Inc. v. Flesher*, 605 F.2d 1130, 1133 (9th Cir. 1979) and cases cited therein. As noted in the *Miss Universe* case:

> "After a final decision on the merits, we can closely examine the different variables which are relevant. . . . However, the more narrow abuse of discretion standard applies when we are called upon to review the grant or denial of a preliminary injunction.
>
> In cases such as the present one, in granting a preliminary injunction, the parties will not have had a full opportunity to either develop or present their cases, and the district court will have had only a brief opportunity to consider the different factors relevant. . . . That is one reason why this court generally limits its review to the more general determination as to whether the court below abused its discretion (citation omitted). *After all, the injunction is merely attempting to maintain the status quo pending the trial on the merits . . . Otherwise . . . we would be prejudging the merits before there was a decision by the district court.*" (emphasis added)

Miss Universe, Inc. v. Flesher, supra, 605 F.2d 1130.

Contrary to the Ninth Circuit rulings, the Court of Appeals' decision in this case overturns the status quo and effectively determines the merits of the litigation. By vacating the District Court's injunction, Yellow Cab faces economic ruin. On the other hand, the status quo ordered by the District Court presents no hardship to the City, inasmuch as the franchise of an entity found fully qualified by the City will continue, pending litigation and a final decision on the merits. Hence, it is not only appropriate but necessary that this Court exercise its power of supervision to correct the error of the Court of Appeals and prevent the irreparable and unconstitutional harm imposed on Yellow

Cab. Indeed the Court of Appeals' rationale, in vacating the injunction, is based upon its determination of several questions in conflict with applicable decisions of this Court.

2. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH THE DECISIONS OF THIS COURT REGARDING THE CONGRESSIONAL PROHIBITION AGAINST A LOCAL GOVERNMENT'S INTERFERENCE WITH LABOR DISPUTES.

This Court had consistently held that, under the preemption provision of the Supremacy Clause, state and local governments may not interfere with the free exercise of the collective bargaining processes established by Congress under the federal labor statutes. *Lodge 76, International Ass'n of Machinists & Aerospace Workers v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 96 S. Ct. 2548 (1976); *A. K. Porter v. NLRB*, 397 U.S. 99, 90 S. Ct. 821 (1970); *American Shipbuilding Company v. NLRB*, 380 U.S. 300, 85 S. Ct. 955 (1965); *Local 20, Teamsters, Chauffeurs & Helpers Union v. Morton*, 377 U.S. 252, 84 S. Ct. 1253 (1964); *Garner v. Teamsters, Chauffeurs & Helpers Union*, 346 U.S. 485, 74 S. Ct. 161 (1953).

In *Lodge 76*, this Court reaffirmed the limitations on state action where the parties to a labor dispute engaged in peaceful and lawful economic activities in furtherance of their bargaining demands. With respect to conduct not specifically protected or prohibited under the labor laws, this Court stated that it must determine from congressional intent what state action is still permissible in light of the federal statutes' preemption as to employer-employee activities that were left unregulated "to be controlled by the free play of economic forces". This Court observed in *Lodge 76* that a state may not impinge on an area of labor disputes designed to be free and unregulated because such state action would be as much an obstruction of federal policy as if the state were

to declare lawful certain labor activities that were prohibited by federal act. In noting that the resort to economic weapons is the right of the employer as well as the employee, the Court, quoting from its holding in *NLRB v. Insurance Agents*, 361 U.S. 477, 495, 80 S. Ct. 419, 430 (1960) stated:

> ". . . The economic weakness of the affected party cannot justify state aid contrary to federal law for, as we have developed, 'the use of economic pressure by the parties to a labor dispute is not a grudging exception [under] . . . the [National Labor Relations Act]; it is part and parcel of the process of collective bargaining.' "

In holding that a state could not interfere with a union's refusal to work overtime during a labor dispute, the Court in *Lodge 76* held that, although Congress had left such union conduct unregulated, the State's interference was impermissible:

> "The State action in this case is not filling 'a regulatory void which Congress plainly assumed would not exist.' (Citation omitted) Rather, it is clear beyond question that Wisconsin '[entered] into the substantive aspects of the bargaining process to an extent Congress has not countenanced.'
>
> Our decisions hold that Congress meant that these activities whether of employer or employees, were not to be regulable by states any more than the NLRB . . . Rather, both are without authority to attempt to 'introduce some standard of properly "balanced" bargaining power . . .' "

Lodge 76, International Ass'n of Machinists & Aerospace Workers v. Wisconsin Employment Relations Comm'n, supra, 427 U.S. at 150-151, 96 S. Ct. at 2557.

Applying the foregoing constitutional analysis to the instant case, the District Court enjoined the City from terminating Yellow Cab's franchise because it found that the true purpose of the City was to influence the economic weapons of Yellow Cab and its Teamster drivers in the labor dispute — to the irreparable disadvantage of Yellow Cab. Thus, the District Court deemed the conduct of the City of Los Angeles to be an impermissible interference in the parties' labor negotiations in violation of the Supremacy Clause.

Although the Court of Appeals held that the effect of the City's conduct and not its motive was the only proper subject of judicial inquiry, it did acknowledge that one effect of the denial of Yellow Cab's franchise renewal "was to alter the balance of power in the collective bargaining dispute in favor of the Union . . . [and] that by threatening to deny and ultimately denying renewal of Yellow Cab's franchise, the city deprived Yellow Cab of an economic weapon — the opportunity to simply outlast the strikers." (App. A, at 2-3; 686 F.2d at 579).

Despite the City's interference with the economic balance between Yellow Cab and the Union, the Court of Appeals determined that the City's conduct was not preempted.

The Court of Appeals' rationale is in error because it is an artificial synthesis of this Court's statement in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 244, 79 S. Ct. 773, 779 (1959) that preemption may not lightly be made where interests "deeply rooted in local feeling and responsibility" are affected and the Court of Appeals' view that under *Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board*, 315 U.S. 740, 749, 62 S. Ct. 820, 825 (1942), the use of streets and highways — and therefore the renewal of a taxicab franchise — is a "traditionally local matter" left to state and local regulation.

The Court of Appeals, however, misinterpreted and misapplied the principles noted in *San Diego Building Trades Council* and *Allen-Bradley*. By generalizing that "the use of streets and highways" is "deeply rooted in local feeling and responsibility" the Court of Appeals has created catch phrases of purported constitutional dimension. This Court's statement as to local interests in *San Diego Building Trades Council* and its holding in *Allen-Bradley* cannot be applied in a vacuum. In *San Diego Building Trades Council*, this Court cited certain of its prior decisions that, absent congressional direction, it could not infer that states lacked power to act where regulated employer-employee conduct touched interests deeply rooted in local feeling and responsibility. Yet, each of the decisions referred to in *San Diego Building Trades Council* concerned violent conduct that was destructive of peaceful labor relations and thus, because of public safety, regulable by the states.[3]

Clearly, this Court's rulings that preemption does not apply to interests deeply rooted in local feeling and responsibility concern a state's permissible power to control the safety of its citizens. In this case, the City had no such

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[3]The prior decisions of this Court noted in *San Diego Building Trades Council* are *International Union, United Automobile, Aircraft and Agricultural Implement Workers, etc. v. Russell*, 356 U.S. 634, 78 S. Ct. 932 (1958), where this Court held that a state had jurisdiction to entertain an action by an employee against a union for interfering through the use of force and intimidation with the employee's right to work; *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131, 78 S. Ct. 206 (1957), where this Court held that criminal conduct calculated to provoke violence, as opposed to peaceful picketing, could be restrained by the state; *United Automobile, Aircraft and Agricultural Implement Workers, etc. v. Wisconsin Employment Relations Board*, 351 U.S. 266, 76 S. Ct. 794 (1956), where this Court ruled that the states have power to enjoin violent union conduct during the course of a strike; and *United Construction Workers, etc. v. Laburnum Const. Corp.*, 347 U.S. 656, 74 S. Ct. 833 (1954), where it was held that a state had the power to entertain an employer's tort action resulting from a union's threats and intimidation.

concern, inasmuch as Yellow Cab had been found to be fully qualified to operate a taxicab service. The belated justification for the City's interference with the labor negotiations between Yellow Cab and the Teamsters was purely and impermissibly economic, *i.e.*, to increase the compensation of taxicab drivers.

In *Allen-Bradley*, this Court was also presented with a state's power to control violence during labor negotiations. In *Allen-Bradley*, a union engaged in mass picketing at the employer's premises and upon adjacent public streets. The picketing included threats and violence to individuals and property, as well as the obstruction and interference with the use of the public streets and sidewalks. Clearly, *Allen-Bradley* does not stand for the principle that a local government can interfere with the economic balance between an employer and its employees in a peaceful labor negotiation solely because the employer's business concerns the use of streets and highways.[4]

If the Court of Appeals' synthesis of the decisions in *San Diego Building Trades Council* and *Allen-Bradley* were to be upheld, any state or local government could interfere with the economic balance between labor and management as long as the employer's business concerned the use of streets and highways. Since in this case the City's sole justification for its refusal to renew Yellow Cab's franchise was to provide higher pay for its drivers, the Court of Appeals' decision would mean that any local government could totally condition the grant of any franchise to applicants that conform to organized labor's demands. The resulting control

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[4]The use of streets and highways is not solely a matter of local feeling and responsibility to avoid preemption. For example, as to the Commerce Clause, see *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 79 S. Ct. 962 (1959).

by a union of an employer's business would be repugnant to this Court's pronouncements that state governments cannot interfere with the economic give and take between labor and management.

3. THE DIFFERENTIAL TREATMENT BETWEEN PETITIONER AND OTHER FULLY QUALIFIED APPLICANTS HAS NO LEGITIMATE GOVERNMENTAL PURPOSE AND HAS DENIED PETITIONER EQUAL PROTECTION OF THE LAWS.

Although Yellow Cab and other franchises were deemed by the City to be fully qualified and in compliance with all terms and conditions of their franchises, and as a consequence, worthy of long-term franchise renewals, only Yellow Cab was denied a renewal. The differentiation between Yellow Cab and the other franchisees was based solely upon the labor dispute between Yellow Cab and its Teamster drivers. Further, prior to the City's ultimate refusal to extend Yellow Cab's franchise, Yellow Cab was the only franchisee reserved for a "temporary extension" and only Yellow Cab was subjected to the requirement of a "finding" that the granting of even that extension was in the "best interests" of the City. Such discrimination in treatment between similarly situated franchise renewal applicants clearly violated Yellow Cab's right to equal protection of the laws.

The wrongful action of the City of Los Angeles is particularly egregious for two reasons: (1) the City's interference in the collective bargaining process between Yellow Cab and the Teamsters to coerce Yellow Cab into yielding to the union's demands; and (2) the City's arbitrary and capricious establishment of the need for a "finding," without any standards, whereby the City could deny even a limited extension of the franchise if Yellow Cab refused to be coerced into settling with the union.

The Equal Protection Clause of the Fourteenth Amendment requires state and local governments to apply their laws uniformly to situations that cannot reasonably be distinguished. See, *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322 (1969); *Sturm v. California Adult Authority*, 395 F.2d 446 (9th Cir. 1967), cert. denied 395 U.S. 947, 89 S. Ct. 2021 (1969).[5] The Equal Protection Clause applies to the activities of city and local governments. See, *Hunter v. Erickson*, 393 U.S. 385, 89 S. Ct. 557 (1969).

In the instant case, Yellow Cab and the other franchisees were all similarly situated with respect to the legitimate objects and purposes of the law, *i.e.*, the franchise provisions of the City charter and ordinances. All of the companies had previous franchises, all of which expired on the same date. All of the companies applied for renewals, and they were all investigated by the same City government. All of the companies were found by the City's Department of Transportation, its Board of Transportation Commission and its City Council Committee on Transportation, and the City Council itself to be qualified for new franchises. A specific determination was made that Yellow Cab and four other franchisees be given new four-year franchises, inasmuch as all were in compliance with the City's terms and conditions. Thus, the City imposed no requirement which Yellow Cab failed to meet in the same manner and to the same degree as the other franchisees. Accordingly, there was no legitimate reason for treating Yellow Cab differently.

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[5]Article IV, Section 16 of the California Constitution is the substantial equivalent of the Equal Protection Clause of the Fourteenth Amendment. *Durham v. Los Angeles*, 91 Cal.App.3d 567, 154 Cal.Rptr. 243 (1979). The California provision requires, at a minimum, that persons similarly situated with respect to the legitimate purpose of the law receive like treatment. See, *Benjamin v. Ricks*, 63 Cal.App.3d 593, 132 Cal.Rptr. 758 (1976).

The District Court, in granting the injunction, found that the motivation of the City in treating Yellow Cab differently was to interfere impermissibly in Yellow Cab's labor dispute. The Court of Appeals, however, upheld the City's discrimination against Yellow Cab on the basis that the City had a legitimate governmental purpose in such interference, that is, "the assurance of adequate compensation for taxicab drivers," and thus better taxicab service. Notwithstanding the fact that the Court of Appeals recognized this purpose to have been belatedly asserted by the City (until after the discriminatory treatment of Yellow Cab had taken place), the court determined that it was a sufficient classification under the Equal Protection Clause.

Even if the City's belatedly asserted purpose is taken at face value, it still fails constitutional scrutiny. Indeed, this purpose is directly contrary to the prohibition against a state or local government's economic interference in the collective bargaining process. *Lodge 76, International Ass'n of Machinists & Aerospace Workers v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 96 S. Ct. 2548 (1976).

Whether under the strict-scrutiny test or the rational-basis standard,[6] the City's purpose in discriminating against Yellow Cab is clearly impermissible. The City simply has no legitimate interest in disrupting the economic balance, to the employer's economic ruin, during a peaceful and lawful labor dispute. If the conduct of the City of Los Angeles can be justified, then employers throughout the nation who are affected from time to time with labor disputes, and who are required to meet various local requirements relating to business licenses, permits or franchises, will be forced to surrender to union demands in order to survive in business. If

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[6]Compare *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322 (1969) and *Dandridge v. Williams*, 397 U.S. 471, 90 S. Ct. 1153 (1970).

state and local governments can, whenever a labor dispute occurs, select those employers with whom they and organized labor will do business, the national scheme of labor relations will be destroyed.

The City's unfair classification of Yellow Cab in the franchise renewal proceedings vis-a-vis the City's classification of the other franchisees violated Yellow Cab's fundamental rights under the Equal Protection Clause.[7]

4. THE DIFFERENTIATION BETWEEN PETITIONER AND OTHER FULLY QUALIFIED APPLICANTS HAS DEPRIVED PETITIONER OF DUE PROCESS.

Because of its full compliance with City requirements and the findings of the City that Yellow Cab was fully qualified for a full-term renewal, Yellow Cab had a reasonable expectation of continuing business as a franchisee Such an expectation is an interest protected by the Fourteenth Amendment from deprivation without due process. See, *Graham v. Richardson*, 403 U.S. 365, 374, 91 S. Ct. 1848, 1853 (1971); see also, *Case v. Weinberger*, 523 F.2d 602 (2nd Cir. 1975).

In *Bell v. Burson*, 402 U.S. 535, 91 S. Ct. 1586 (1971), this Court held that such matters as licenses, when their continued possession becomes essential in the pursuit of livelihood, are constitutionally protected under the Due Process Clause whether their entitlement is denominated a "right" or a "privilege".

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[7]The City's differentiation between Yellow Cab and the other franchisees also violated Yellow Cab's rights under 42 U.S.C. §1983, which prohibits deprivation, under color of any statute, ordinance or regulation, the rights, privileges or immunities of the Constitution or federal law. Petitioner, a corporation, is entitled to the protection of §1983. See, *Advocates for Arts v. Thomson*, 532 F.2d 793 (1st Cir.), cert. denied 492 U.S. 894, 99 S. Ct. 254 (1976). The City of Los Angeles is subject to the prohibitions of §1983. See, *Owen v. City of Independence*, 445 U.S. 622, 100 S. Ct. 1398 (1980).

The Court of Appeals, however, held that Yellow Cab's expectation of a franchise renewal could only be considered a claim of entitlement under the Due Process Clause if defined by an independent source such as state or federal law. See, *Russell v. Landrieu*, 621 F.2d 1037, 1040 (9th Cir. 1980). The court then limited this independent source to state law or city ordinance. In noting that the Los Angeles City Charter provides that the City may grant franchises, the court held that the City could deny franchises even if the applicants met established eligibility requirements. Since the record before the Court of Appeals showed no City-created standards for renewal, the Court determined that the City's conduct did not deny Yellow Cab due process.

The Court of Appeals erred in limiting the protected entitlement under the Due Process Clause to a definition under state law or city ordinance. The fact that the City of Los Angeles may not have defined Yellow Cab's protectible interests by ordinance could not deprive Yellow Cab of due process protection. *Graham v. Richardson, supra; Bell v. Burson, supra.*

A franchise, like a license, need not be defined by local law to give rise to due process protection. For example, in *Hornsby v. Allen*, 326 F.2d 604 (5th Cir. 1964), an applicant for a liquor license met all requirements for being licensed, but the application was denied without any reason by local officials. The *Hornsby* court held that the fundamental requirements of due process are applicable to licensing proceedings and that the lower court should determine whether ascertainable standards governed the licensing and, if not, "enjoin denial of licenses under the prevailing system and until a legal standard is established" to provide for due process. *Hornsby v. Allen, supra*, 326 F.2d at 612.

The holding in *Hornsby v. Allen, supra*, is in accord with decisions of this Court and further demonstrates that Yellow

Cab need not have shown the existence of standards defined by the City for the franchise renewal. For example, in *Board of Regents v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 2707 (1972), this Court upheld the dismissal of a college professor in a setting where there were no statutory or administrative standards defining eligibility for reemployment. However the Court noted that the state's action in that case did not deprive the professor from all public employment in state universities. Had this been the case, this Court observed that an entirely different matter would be presented under due process principles. In citing *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 185, 71 S. Ct. 624, 655 (Jackson, J., concurring), and *Schware v. Board of Bar Examiners*, 353 U.S. 232, 238, 77 S. Ct. 752 (1957), the Court observed states cannot foreclose future opportunity.

Applying these principles to the instant case, it is clear that the City's conduct has completely deprived Yellow Cab of its business existence. Without a franchise, Yellow Cab will have no business and will be forced to liquidate its assets at a loss of as yet untold dimensions.

Furthermore, Yellow Cab has been deprived of another and distinctly different right, that is, its right to bargain freely with the Teamsters Union. The City's action and the decision of the Court of Appeals upholding that action have rendered Yellow Cab's right and ability to bargain with its union meaningless. That right and ability is protected by federal law.

Doubtless Yellow Cab has been denied substantive and procedural due process of law. As a franchisee, Yellow Cab has made a substantial investment in its business and has met all lawful terms and conditions for renewal of its franchise. Yet, it has been denied its business interest and its ability to bargain with its own union drivers by the capricious and arbitrary conduct of the City of Los Angeles.

CONCLUSION.

For the reasons stated above, a Writ of Certiorari should issue to review the opinion of the Court of Appeals for the Ninth Circuit.

DATED: October 27, 1982.

Respectfully submitted,

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Golden State Transit Corporation
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APPENDIX A.

Opinion.

In the United States Court of Appeals for the Ninth Circuit.

Golden State Transit Corporation, etc. Plaintiff/Appellee, vs. City of Los Angeles, Defendant/Appellant. No. 81-5369 D.C. NO. 81-1519.

Filed: September 7, 1982.

Appeal from the United States District Court for the Central District of California. A. Andrew Hauk, District Judge, Presiding, Argued and Submitted May 7, 1982.

Before: Anderson, Skopil and Canby, Circuit Judges. Canby, Circuit Judge.

The City of Los Angeles (City) appeals from the district court's grant of a preliminary injunction enjoining the City from allowing the taxicab franchise of Golden State Transit Corporation d/b/a Yellow Cab of Los Angeles (Yellow Cab) to terminate or from treating the franchise as if it had expired. *See Golden State Transit Corp. v. City of Los Angeles*, 520 F. Supp. 191 (C.D. Cal. 1981). Yellow Cab alleged that the City's refusal to grant a renewal of Yellow Cab's taxicab franchise constituted unlawful interference with the ongoing collective bargaining between Yellow Cab and Teamsters Local No. 572 and deprived Yellow Cab of due process and equal protection of the law in violation of 42 U.S.C. §1983. We agree with the district court's conclusion, 520 F. Supp. at 193, that the balance of hardships in this case tips sharply in Yellow Cab's favor. Nonetheless, since Yellow Cab does not have a fair chance of success on the merits, *see Benda v. Grand Lodge of International Ass'n of Machinists & Aerospace Workers*, 584 F.2d 308, 315 (9th Cir. 1978), *cert. dismissed*, 441 U.S. 937 (1979), we conclude that the district court abused its discretion in

granting the preliminary injunction. Accordingly, we vacate the preliminary injunction.

Unlawful Interference in a Labor Dispute

The City contends that its actions did not constitute an impermissible interference in a labor dispute because (1) such interference was not the purpose behind its actions and (2) federal labor law does not preempt the City from exercising its authority to deny renewal of a taxicab franchise. We conclude that Yellow Cab has little chance of making the requisite showing that Congress intended to bar a city from refusing to renew the taxicab franchise of a company engaged in a collective bargaining dispute with its drivers. Thus, with respect to the preemption issue, Yellow Cab has failed to satisfy the "serious question" requirement for issuance of a preliminary injunction. *See id.* at 314-15.

The district court found that "the City's true purpose in declining to renew plaintiff's [Yellow Cab's] franchise" as "substantively to influence the economic (as opposed to political) weapons of Yellow Cab and its Teamster drivers in their labor negotiation efforts, by diminishing the economic power of the drivers." Excerpt of Record at 116. Courts, however, are not permitted to inquire into alleged motives of legislators. Rather, they must look to the effects of the legislative acts. *Daniel v. Family Security Life Insurance Co.*, 336 U.S. 220, 224 (1949); *see United States v. Des Moines Navigation & Railway Co.*, 142 U.S. 510, 544-45 (1892). The district court did determine that one *effect* of the denial of Yellow Cab's franchise renewal was to alter the balance of power in the collective bargaining dispute in favor of the union. *See* 520 F. Supp. at 194. That determination is not clearly erroneous. *See* Fed. R. Civ. P. 52(a). There is ample evidence in the record to support a finding that by threatening to deny and ultimately denying

renewal of Yellow Cab's franchise, the city deprived Yellow Cab of an economic weapon — the opportunity simply to outlast the strikers.

In view of the effect of the city's actions upon the ongoing labor dispute, we must consider whether the National Labor Relations Act, as amended, 29 U.S.C. §§151-168, preempted the City's power to deny Yellow Cab's application for renewal of its franchise. Federal labor legislation seeks to strike a balance between the power of labor and management by protecting certain activities, *see* 29 U.S.C. §157, prohibiting certain practices, *see id.* §158, and leaving other conduct "unregulated because left 'to be controlled by the free play of economic forces.' " *Lodge 76, International Ass'n of Machinists & Aerospace Workers v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 140 (1976) (*quoting NLRB v. Nash-Finch Co.*, 404 U.S. 138, 144 (1971)); *accord, New York Telephone Co. v. New York State Dep't of Labor*, 440 U.S. 519, 531 (1979) (plurality opinion); *Local 20, Teamsters, Chauffeurs & Helpers Union v. Morton*, 377 U.S. 252, 259-60 (1964). Yellow Cab contends that the actions of the City fall within the last of these three categories and therefore are preempted by federal law. The Supreme Court, however, has clearly stated that where interests "deeply rooted in local feeling and responsibility" are affected, we may not lightly infer that Congress intended to deprive state and local governments of the power to act. *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 244 (1959), *quoted with approval in Lodge 76*, 427 U.S. at 136. In such an instance, a finding of preemption must rest upon "compelling congressional direction." *San Diego Building Trades Council*, 359 U.S. at 244.

The use of streets and highways is a "traditionally local matter" left to state and local regulation under the police power. *Allen-Bradley Local No. 1111 v. Wisconsin Em-*

ployment Relations Board, 315 U.S. 740, 749 (1942), *quoted in Lodge 76*, 427 U.S. at 136 n.2. Yellow Cab has not brought to our attention nor have we found any evidence that might rise to the level of a "compelling congressional direction" to deprive a local government of the power to deny a franchise renewal to a franchisee involved in a labor dispute. We therefore conclude that Yellow Cab has little chance of prevailing on the merits of the preemption question. *See Benda*, 584 F.2d at 315.

Due Process

The City contends that Yellow Cab has no constitutionally protected property interest in a franchise renewal and, therefore, denial of Yellow Cab's application for a franchise renewal did not deprive Yellow Cab of procedural due process. We agree.

The requirements of procedural due process apply only to deprivations of a constitutionally protected liberty or property interest. *Board of Regents v. Roth*, 408 U.S. 564, 569 (1972). "A property interest in a benefit protected by the due process clause results from a legitimate claim of entitlement created and defined by an independent source, such as state or federal law." *Russell v. Landrieu*, 621 F.2d 1037, 1040 (9th Cir. 1980). Yellow Cab has failed to bring to our attention any state law or city ordinance that creates an expectation of entitlement to a franchise renewal. The relevant provision of the Los Angeles City Charter provides in part: "The City *may*, by ordinance, . . . grant to the holder of such franchise a new franchise to replace such franchise about to expire." Los Angeles City Charter, §3, subdiv. 8(D); Excerpt of Record at 4 (emphasis added). The wording of the statute is permissive, not mandatory, thus conferring on the City discretion to deny franchises to applicants even if they meet any established eligibility re-

quirements. *See Erdelyi v. O'Brien*, 680 F.2d 61, 63 (9th Cir. 1982); *Jacobson v. Hannifin*, 627 F.2d 177, 180 (9th Cir. 1980). Moreover, Yellow Cab has not referred us to a set of standards defining eligibility for renewal. *Cf. Board of Regents v. Roth*, 408 U.S. at 566-67 (absent statutory or administrative standards defining eligibility for reemployment, decision whether to rehire a nontenured teacher is left to unfettered discretion of state university officials). Yellow Cab does not assert that the terms of the original franchise secure a property interest in renewal. Nor has Yellow Cab alleged the existence of rules and understandings promulgated and fostered by city officials that might justify a legal entitlement. *See Perry v. Sindermann*, 408 U.S. 593, 602-03 (1972) (policies and practices may establish legitimate claim of entitlement). The recommendation by various city committees that Yellow Cab's franchise be renewed does not rise to the level of a de facto guarantee of renewal equivalent to the de facto tenure system alleged in *Perry v. Sindermann*. At most, Yellow Cab had only a unilateral hope for renewal. *Geriatrics, Inc. v. Harris*, 640 F.2d 262 (10th Cir. 1981), *cert. denied*, 102 S.Ct. 129. Nor is the interest asserted by Yellow Cab so fundamental as to warrant protection aside from state and local law or practice. *See Jacobson v. Hannifin*, 627 F.2d at 180.

In sum, Yellow Cab has failed to raise a serious question with respect to the threshold issue in a procedural due process claim — whether the claimant has a constitutionally protected liberty or property interest.

Equal Protection

The City next argues that its actions did not violate the Equal Protection Clause because they furthered legitimate governmental interests, namely provision of quality taxicab service and adequate compensation for taxicab drivers. Yel-

low Cab asserts that the sole purpose behind the differential treatment of Yellow Cab vis-a-vis the other applicants was the City's desire to coerce Yellow Cab into yielding to union demands. We conclude that Yellow Cab does not have a fair chance of demonstrating that the alleged classification is not rationally related to a legitimate governmental purpose.

In reviewing a state statute or local ordinance under the Equal Protection Clause, courts generally presume that the legislative act is valid. *Parham v. Hughes*, 441 U.S. 347, 351 (1979). Where neither a fundamental right nor a suspect class is implicated, legislative classifications are constitutional if they bear some rational relationship to a permissible governmental objective. *Id.*; *Holloway v. Arthur Andersen & Co.*, 566 F.2d 659, 663 (9th Cir. 1977). The burden is on the party challenging the legislative judgment to convince the court that there is no set of facts that may reasonably be conceived to justify the classification. *Vance v. Bradley*, 440 U.S. 93, 111 (1979); *Lamb v. Scripps College*, 627 F.2d 1015, 1021 & n.9 (9th Cir. 1980).

The City, in acting on the 12 applications for franchise renewals created a classification that differentiated between the one applicant engaged in a collective bargaining dispute and the remaining applicants not involved in such a dispute. Even assuming that the members of the council were motivated at least in part by an impermissible purpose, that classification still survives judicial scrutiny. It is well settled that a reviewing court "will not strike down an otherwise constitutional statute on the basis of an allegedly illicit legislative motive." *United States v. O'Brien*, 391 U.S. 367, 383 (1968); *accord, Kalish v. United States*, 411 F.2d 606, 607 (9th Cir.), *cert. denied*, 396 U.S. 835 (1969). The classification is valid if some legitimate state interest is advanced. The reviewing court need not and should not

ascertain whether the particular governmental interest was the primary legislative purpose. *McGinnis v. Royster*, 410 U.S. 263, 276-77 (1973). The City has advanced as the permissible governmental purposes behind its actions both the provision of quality taxicab service and the assurance of adequate compensation for taxicab drivers. Although these interests were not asserted until after the differential treatment of Yellow Cab had commenced, the "courts may properly look beyond the articulated state interest at the time of enactment in testing a statute under the rational basis test." *Lamb v. Scripps College*, 627 F.2d at 1021 n.9.

We conclude that Yellow Cab has not met, and has little chance of meeting, its burden of establishing that no set of facts may reasonably be conceived to justify the classification. *See Vance v. Bradley*, 440 U.S. at 111; *Lamb v. Scripps College*, 627 F.2d at 1021 & n.9. The City could have rationally determined that denying Yellow Cab's application for renewal of its franchise would cause or contribute to higher levels of taxicab service and increased compensation for taxicab drivers.

The district court's grant of a preliminary injunction is vacated.

APPENDIX B.

Findings of Fact.

United States District Court Central District of California.

Golden State Transit Corporation, a California corporation, doing business as Yellow Cab of Los Angeles, Plaintiff, City of Los Angeles, a municipal corporation, Defendant. No. 81 1519 AAH.

Filed: April 13, 1981.

Plaintiff's Application for Preliminary Injunction having come on for hearing April 13, 1981 before this court. The parties have presented a substantial record. After consideration of the evidence and argument of counsel, the court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Plaintiff Golden Transit Corporation is a California corporation doing business as Yellow Cab of Los Angeles ("Yellow Cab") with its principal place of business in the City of Los Angeles.

2. Defendant City of Los Angeles ("City") is a chartered city organized and existing under the laws of the State of California.

3. In 1977, plaintiff's predecessor was in receivership. Plaintiff was assured by several persons, including at least one responsible City official, that taxicab franchise renewal was automatic and that no Los Angeles taxicab franchise had failed to be renewed. In reliance upon these representations, plaintiff purchased the assets of its predecessor and obtained City Council approval of transfer of the franchise.

4. Since 1977, Yellow Cab has operated as the largest taxicab company in Los Angeles pursuant to a City franchise which was due to expire October 29, 1980. Twelve other City taxicab franchises were due to expire on that same

date. The expiration dates of all of the franchises were extended to March 31, 1981.

5. On March 30, 1981, this court granted an application of Yellow Cab for issuance of a temporary restraining order prohibiting the City from allowing its franchise to expire.

6. Yellow Cab operated pursuant to a collective bargaining agreement with its Teamster drivers. The agreement expired in October, 1980, but was renewed by interim agreements which finally expired February 11, 1981.

7. On that same date, February 11, 1981, the Los Angeles City Council was scheduled to and did meet to consider whether to renew franchises of Yellow Cab and twelve other franchises. That same day, Yellow Cab's drivers went out, and remain, on strike. A dispute exists between Yellow Cab and its drivers regarding wages and benefits.

8. Until the strike, Yellow Cab was engaged in extensive business operations in the City of Los Angeles and at Los Angeles International Airport, and train and bus terminals, transporting passengers who were arriving from or were departing to the various states and other countries, thereby affecting interstate commerce.

9. Yellow Cab and the other franchise holders had all made timely application for renewals of their franchises. The City's Department of Transportation made a report to the City's Board of Transportation stating that plaintiff was in full compliance with all terms and conditions of its franchise, recommending long-term renewal. On September 4, 1980, and again on January 26, 1981, defendant's Board of Transportation Commissioners recommended long-term renewal of the Yellow Cab franchise to the City Council Committee on Transportation and Traffic.

10. On November 19, 1980, the City's Committee on Transportation and Traffic recommended to the full City

Council that a long-term renewal franchise be granted to Yellow Cab and certain other franchisees.

11. On February 5, 1981, the Joint Council of Teamsters sent letter to the Mayor and all City Council members advising them of the existence of a labor dispute between plaintiff and the Teamsters.

12. On February 11, 1981, the City Council met to consider whether to grant taxicab franchises to the thirteen applicants. It considered a report of its Transportation and Traffic Committee dated February 2, 1981 ("Report"). The Report recommended, *inter alia*, renewal franchises for four years for six franchisees, including Yellow Cab, and for one year for seven franchisees.

13. The Report also found that the six companies recommended for full-term franchises were "in compliance with all terms and conditions of their franchise, including these five conditions (a) payment of their franchise fees; (b) compliance with all rules regarding leasing/contracting operations: (c) furnish waybills and dispatch records; (d) maintain minimum number of vehicles required by franchise; and (e) compliance with Affirmative Action provisions of franchise."

14. A representative of the Teamsters appeared at the Council meeting and extensively detailed the dispute between Yellow Cab and its drivers, and recommended that Yellow Cab not receive a full franchise because of the labor dispute.

15. Thereupon, the City Council granted the recommended full-term franchises to the five other companies, but postponed consideration of Yellow Cab to February 17, 1981. The Council did, however, adopt its Committee's Report, finding that Yellow Cab and the other five com-

panies were in full compliance with all terms and conditions of their franchises.

16. On February 17, 1981, the City Council considered whether to grant Yellow Cab a full-term four-year franchise. The Teamsters appeared and opposed the full-term grant because of Yellow Cab's labor difficulties. Thereupon, the Council granted a franchise extension only until April 30, 1981, provided that the City Council found before March 27, 1981, that the 30-day extension ordinance was "in the best interests" of the City. No other franchise grant was subject to this condition.

17. On February 17, 1981, the Teamsters told Yellow Cab that if the labor dispute was not settled, Yellow Cab was "going to have a lot of trouble" renewing the franchise.

18. On March 22, 1981, the Teamsters told Yellow Cab that the Teamsters were going to see that the Yellow Cab franchise was not going to be renewed unless union demands were met.

19. On March 23, 1981, the City Council met to consider whether it was in the "best interest" of the City to allow Yellow Cab the one month extension of its franchise. The City Council invited parties to "express their views." Yellow Cab urged the Council to grant the extension to avoid intervening in the labor dispute. The Teamsters urged denial of the extension because, they contended, Yellow Cab was bargaining "in bad faith" with the drivers and that to grant a further extension would not be in the drivers' best interests.

20. The Teamster representation recited to the Council the purported "modest" demands labor was making on Yellow Cab and Yellow Cab's purported intransigence. He reported that the striking workers had voted, with only one dissent, "to endorse the position that the franchise not be

extended . . ." He said he hoped that present Yellow Cab employees "would be hired by whatever successor is established" for Yellow Cab.

21. The AFL-CIO representative, representing the "brothers and sisters" of the Teamsters, reminded the Council that there are 700,000 union members in the County, claimed that Yellow Cab was acting in "bad faith," and urged denial of the franchise.

22. A municipal election is scheduled for Los Angeles on April 14, 1981 wherein numerous members of the City Council and the Mayor are standing for reelection.

23. The President of the Council stated that "it will be very difficult to get this ordinance passed to extend this franchise if the labor dispute is not settled by the end of the week . . ." and that "both sides should realize that [if] it is not done by the end of this week, that there is a very good possibility that there will not be a . . . franchise for Yellow Cab, it will lapse, it will be open to . . . other companies."

24. Thereupon, the Council voted to defeat the motion which recommended that the Council find that it would be in the best interests of the City to extend the franchise. Yellow Cab was thereby denied even a thirty-day extension of its franchise.

25. At no point in the franchise renewal proceedings was plaintiff notified that any evidentiary or fact finding hearing would be held to determine whether the franchise should be renewed. Plaintiff was never offered an opportunity to present sworn testimony, to offer admissible evidence, or to cross-examine opposing parties under oath. The only factual findings adduced were that plaintiff was in full compliance with all the terms of its franchise.

26. Under the terms of its Charter, the City was required to have adopted an ordinance of general application establishing the procedural standards for granting an individual renewal franchise. There are no established procedural standards for renewal of taxicab franchises which Yellow Cab has failed to meet.

27. Unless the court grants the preliminary injunction requested, the status quo will change radically. Plaintiff's taxicab franchise will expire. Plaintiff's lawful right to bargain with the Teamsters will be rendered moot. Plaintiff's business will be destroyed.

28. The City has attempted substantively to influence the economic (as opposed to political) weapons of Yellow Cab and its Teamster drivers in their labor negotiation efforts, by diminishing the economic power of Yellow Cab, and increasing the economic power of the drivers. This was the City's true purpose in declining to renew plaintiff's franchise.

29. Any finding of fact which may be deemed a conclusion of law is incorporated into the Conclusion of Law section below, and any conclusion of law which may be deemed a finding of fact is incorporated in this Finding of Fact section.

CONCLUSIONS OF LAW.

30. This court has jurisdiction of this action under 28 U.S.C. Section 1331 and 28 U.S.C. Section 1343 in that it arises under the Supremacy Clause of the Constitution of the United States, Article VI, Clause 2 and the Fourteenth Amendment to the Constitution, under the National Labor Relations Act, 29 U.S.C. Sections 151-68 et seq., under the Labor Management Relations Act, 29 U.S.C. Sections 141-67 and 171-97, and the Civil Rights Act, 42 U.S.C.

Sections 1983, 1985 and 1986. The amount in controversy, exclusive of interest and costs, exceeds the sum of $10,000.

31. Plaintiff has raised serious questions, including but not limited to whether the conduct of the City violates the Supremacy Clause and Fourteenth Amendment due process and equal protection clauses of the United States Constitution, the National Labor Relations Act, the Labor Management Relations Act and the Civil Rights Act (42 U.S.C. Section 1983).

32. The actions of the City herein were and now are under color of law.

33. Denial of rights conferred by federal statute are actionable under 42 U.S.C. Section 1983. There is no necessity of a constitutional violation. *Maine v. Thiboutot* 100 S.Ct. 2502, 65 L.Ed.2d 555, ___ U.S. ___ (1980), 48 USLW 4859.

34. At a minimum, due process requires that the City could not deny the application for franchise renewal arbitrarily, capriciously, unreasonably or with no factual basis sufficient to justify the denial.

35. The City's refusal to grant Yellow Cab even a thirty-day extension, much less a four-year renewal, of its franchise by imposing a "special" requirement that the Council found it to be in the "best interest" of the City, while granting all twelve other franchise applications with no such "special" requirement, denied Yellow Cab, under color of law, of equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution.

36. The City's insistence, under color of law, that Yellow Cab reach an agreement with its Teamster drivers as a condition precedent to franchise extension constituted an unlawful attempt by the State, through its chartered City, to influence the conduct of parties to collective bargaining

negotiations [*Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132, 96 S.Ct. 2548, 49 L.Ed.2d 396 (1976)].

37. The City's actions, under color of law, further violated Yellow Cab's rights, codified in 28 U.S.C. Section 158(d) not to be compelled to agree to a proposal or make concessions to the Teamsters and Yellow Cab's right, codified in 28 U.S.C. Section 158(e) to be free of a secondary boycott, all in violation of 42 U.S.C. Section 1983.

38. The public policy favoring competition, as embodied in the Sherman Antitrust Act (15 U.S.C. Sections 1 and 2) would be served by granting the injunction prayed for.

39. In order to issue a preliminary injunctions, three alternative tests are applied:

TEST 1: (1) Has plaintiff shown a probability of success on the merits and

(2) Has plaintiff shown the possibility of irreparable injury?

or

TEST 2: (3) Are serious questions raised? and

(4) Does the balance of hardships tip sharply in plaintiff's favor?

Wm. Inglis & Sons Baking Co. v. ITT Cont. Baking Co. (9th Cir., 1975) 526 F.2d 86, 88.

or

TEST 3: (5) Has plaintiff established a strong likelihood of success on the merits?

(6) Does the balance of irreparable harm favor plaintiff? and

(7) Does the public interest favor granting the injunction?

Sierra Club v. Hathaway (9th Cir., 1978) 579 F.2d 1162, 1167.

40. Plaintiff has shown a strong likelihood of success on the merits.

41. Plaintiff has shown an absolute certainty of irreparable injury if a preliminary does not issue.

42. Plaintiff has raised serious questions going to the merits of the dispute.

43. The balance of hardships and irreparable harm tips sharply in plaintiff's favor.

44. The public interest favors granting the injunction.

/s/ A. Andrew Hauk
A. Andrew Hauk

APPENDIX C.

Clause 2. Supreme Law of Land

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

APPENDIX D.

Section 1. Equal protection of the laws

* * * nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX E.

Section 1. Due process of law

* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *

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CLERK

No. 82-735

IN THE

Supreme Court of the United States

October Term, 1982

GOLDEN STATE TRANSIT CORPORATION, dba YELLOW CAB OF LOS ANGELES,

Petitioner,

vs.

CITY OF LOS ANGELES,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

RESPONDENT'S BRIEF IN OPPOSITION.

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GOLDEN STATE TRANSIT CORPORATION, dba YELLOW CAB OF LOS ANGELES,

Petitioner,

vs.

CITY OF LOS ANGELES,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION.

The respondent, City of Los Angeles, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the Ninth Circuit's opinion in the case. The opinion is reported in 686 F.2d 758.

Statement of the Case.

The City generally accepts the petitioner's statement of the case with several qualifications and additions. Initially, obviously, the City does not agree that the Court of Appeals' opinion vacating the injunction was and is in error. Rather it was the correct decision.

Yellow Cab's taxicab franchise expired by its own terms on March 30, 1981. Yellow Cab originally had a franchise which provided, in part,

> "This franchise shall expire October 29, 1980, unless sooner terminated . . ." (Excerpt of the Record, 95).

The franchise had no provision for a renewal or extension of the franchise. The City did eventually pass a subsequent franchise ordinance granting Yellow Cab a franchise which by its terms expired March 31, 1981. (ER 102). There was in this franchise the same terms and conditions as in the previous franchise and consequently there was no provision for renewal or extension.

Yellow Cab states, on pages 6 and 7 of its petition, that the City, through its Charter, was required to have adopted an ordinance of general application establishing the procedural standards for granting the renewal of franchises and that there are no established procedural standards for renewal of taxicab franchises which Yellow Cab failed to meet. The City did adopt a procedural ordinance, as referred to in Docket No. 2 of the record, a copy of this ordinance was attached to Appellant's (City) reply brief in the Court of Appeals and judicial notice was requested of said ordinance. This ordinance indicates that the procedural ordinance adopted by the City relates to the administrative procedures the City follows in granting franchises. It does not establish any standards for renewal of franchises for the franchisee.

Yellow Cab's petition gives the impression, in the Statement of Facts, that as a result of the testimony of the Teamsters that the City Council "thereupon" denied Yellow Cab a franchise renewal. The City's action, in not granting the new franchise replacing the expiring one, was after a public hearing. At that hearing David Shapiro, the president of an association of independent taxi drivers testified, in part;

> "David Shapiro, President of the United Independent Taxi Drivers. I would like to say that with the demise of the Yellow and 350 less taxis in Los Angeles, (referring to Yellow Cab's then non-operations because of its driver's strike) I would like to inform the Council

that the drivers are now being served and are able for the first time in two and one-half years to make a decent minimal living. Secondly, the doormen of the major hotels report to me that they are having better quality service with the demise of the Yellow Cabs than they have ever had before." (ER 33).

During the course of the public hearing, on March 23, one of the City Councilmen, Zev Yaroslavsky, questioned Donald Howery, the General Manager of the City's Department of Transportation, the Department which regulates taxicabs in the City. Part of the questioning was as follows:

"Mr. Yaroslavsky. Thank you, Mr. President. Mr. Howery, could you tell me since the strike, how long has the strike been going on now? About a month?

Mr. Howery. Since February 11.

Mr. Yaroslavsky. And since that time have there been enough taxicabs on the streets to pick up the slack that has been left by their lack of presence?

Mr. Howery. We have not done a study of this, but we . . .

Mr. Yaroslavsky. What is your professional opinion?

Mr. Howery. We have not received complaints.

Mr. Yaroslavsky. Okay."

(ER 41).

Mr. Howery went on to testify that before the strike, "There were more than enough taxicabs on the street." (ER 42).

REASONS FOR DENYING THE WRIT.

1. The Court of Appeals' Decision Has Not Departed From the Accepted and Usual Course of Judicial Proceedings Regarding the Review of a Lower Court's Issuance of Injunctive Relief.

Petitioner argues that the court did not properly consider the issue as to whether there were "questions serious enough to require litigation" though the court had concluded the balance of harm tips decidedly toward the petitioner. The court stated (Page 2 of Appendix A):

> "We conclude that Yellow Cab has *little chance of making the requisite showing* that Congress intended to bar a city from refusing to renew the taxicab franchise of a company engaged in a collective bargaining dispute with its drivers. Thus, with respect to the preemption issue, Yellow Cab has failed to satisfy the 'serious question' requirement for issuance of a preliminary injunction.". (Emphasis added.)

Even under the "question serious enough to merit litigation" there has to be some chance of success. The Court, in *Benda v. Grand Lodge of International Ass'n of Machinists and Aerospace Workers*, 584 F.2d 308, 315(4) (9th Cir. 1978) stated:

> "No chance of success at all, however, will not suffice. The irreducible minimum has been described by one court as a fair chance of success on the merits, (cite) while another has said the question must be serious enough to require litigation (cite). The difference between the two formulations is insignificant. Therefore, we accept either as satisfactory."

As to the question of whether petition was denied due process the court specifically stated (Page 5 of Appendix A):

> "In sum, Yellow Cab has failed to raise a serious question with respect to the threshold issue in a procedural due process claim—whether the claimant has a constitutionally protected liberty or property interest."

As to the question of whether petitioner was denied due process the court stated (Page 7 of Appendix A):

> "We conclude that Yellow Cab has not met, and has little chance of meeting, its burden of establishing that no set of facts may reasonably be conceived to justify the classification." (Emphasis added.)

To say that is equivalent to saying that Yellow Cab does not have a fair chance of success on the merits. Thus a question serious enough to require litigation is not present. *Benda, supra.*

The appellate court did not depart from the appropriate standard for reviewing the granting of a preliminary injunction.

2. The Decision of the Court of Appeals Does Not Conflict With the Decisions of This Court Regarding the Congressional Prohibition Against a Local Government's Interference With Labor Disputes.

Yellow Cab cites the case of *Lodge 76, International Ass'n of Machinists and Aerospace Workers v. First Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 96 S.Ct. 2548, 49 L.Ed.2d 396 (1976) for the proposition that state and local governments may not interfere with the free exercise of the collective bargaining process as established by Congress under the Federal Labor Statutes.

In the *Lodge 76* case the Federal National Labor Relations Board had ruled that the particular action of a union, namely the concerted refusal to work overtime was not an unfair labor practice. The employer then filed an unfair labor prac-

tice complaint with the Wisconsin Employment Relations Commission, which proceeded to issue a cease and desist order against the union. The court ruled that the state action was improper. It was obvious, however, in that case that the state agency was taking an action directly contrary to the federal agency. In order to avoid a violation of the supremacy clause a state agency shall refrain from any such action.

In the present matter, Yellow Cab had asked the City to act. It asked the City to grant it a new franchise replacing the franchise due to expire. The logic of Yellow Cab's argument would lead to the City having to surrender all discretion when acting on a matter where there was a labor dispute involved. If such was the case all an applicant for a license, permit, or franchise from a governmental agency would need to do to assure its issuance is to be sure it was involved in a labor dispute at the time the governmental body acted on their application. Just because there may be a labor dispute does not mean that the City surrenders its discretion on a matter where it is being asked to exercise that discretion pursuant to its police power. The regulation of taxicabs is an exercise of the police power. *In Re Martinez*, 22 Cal.2d 259, 262(2); 138 P.2d 10 (1943). The California Supreme Court, in *Martinez*, pointed out that a City is empowered to regulate taxicabs pursuant to its police power granted by the State Constitution. The appellate court decision in the permit matter pointed out that the U.S. Supreme Court stated in the case of *Allen-Bradley, Local No. 1111 v. Wisconsin Employment Relations Board*, 315 U.S. 740, 749; 62 S.Ct. 820; 86 L.Ed. 1154 (1942), that a state may still exercise "its historic powers over such traditional local matters as . . . the use of streets and highways."

The appellate court, in their opinion, stated that the district court finding that the effect of the denial of Yellow

Cab franchise renewal was to alter the balance of power in the collective bargaining dispute in favor of the Union was not clearly erroneous. This is not necessarily the case. The City, by not granting the renewal franchise was not benefiting the strikers since the nonrenewal would mean that they would no longer have a job, at least as drivers for Yellow Cab. This was pointed out in the discussion of the matter in the City Council before the Council action was taken. Councilman Ernani Bernardi, stated:

> "I don't know how having them (the drivers) stay out of work would be on their side, they are going to be out of a job. But, I think this really is a position we've got to taken and, would be to remain neutral." (ER 57).

Mr. Bernardi went on to say that he was going to "vote to remain neutral" and voted against Yellow Cab's request.

In conclusion there is distinction in the facts of the cases cited by petitioner and the facts in this case. In this case the City was not intruding but had been asked by Yellow Cab to act. Further the appellate court pointed out (Page 4, Appendix A) that Yellow Cab had not brought to the attention of the court nor had the court found any evidence that might raise to a "compelling congressional direction" to deprive a local government of the power to deny a franchise renewal to a franchisee involved in a labor dispute.

3. The Alleged Differential Treatment Between Petitioner and Other Applicants for a Renewal Franchise Has a Legitimate Governmental Purpose and Has Not Denied Petitioner Equal Protection of the Laws.

The City Council, the City's legislative body, first considered Yellow Cab's application for a renewal franchise on February 11, 1981, along with the application of the other companies. The granting of a franchise is a legislative

act. *Monarch Cablevision v. City Council*, 239 Cal.App.2d 206, 210(2b); 48 Cal.Rptr. 550 (1966). On that same date, February 11, Yellow Cab's drivers had gone on strike. (Finding of Fact, No. 7, Appendix B to the Petition.) Finding of Fact, No. 15, states that the City Council postponed consideration of Yellow Cab franchise until February 17. The same finding states that the City Council did proceed to grant new franchises to the other companies. Finding No. 16 states that on February 17, the City Council granted Yellow Cab a franchise extension only until April 30, 1981, provided that the City Council found before March 27, 1981, that the 30 day extension was "in the best interest" of the City. There was a legitimate governmental purpose in imposing this condition insofar as Yellow Cab was the only applicant for a renewal who was not providing taxicab service.

Finding No. 19 indicates that on March 23, 1981, the City Council met to consider whether it was in the "best interest" of the City to allow Yellow Cab a one-month extension of its franchise. A public hearing was conducted on that date. (ER 20-61). As indicated in the Statement of Facts Mr. David Shapiro, President of an Association of Independent Taxi Drivers, stated that with the non-operation of Yellow Cab drivers were able to make, for the first time, a decent minimal living and further stated that the doormen of the major hotels in the City had reported to him that they were getting a better quality of service. (ER 33-34). An exchange between Councilman Yaroslavsky and Don Howery, the General Manager of the City's Department of Transportation, indicated that there was adequate taxicab service without Yellow Cab. The appellate court decision, in this case, indicated that the differential between the applicants is valid if some legitimate state interest is advanced. The court further stated that the provision of quality taxicab

service and the assurance of adequate compensation for taxicab drivers could be a rational basis for such alleged differential treatment.

Yellow Cab further argues that the City was motivated by an impermissible purpose, namely to act in a labor dispute on behalf of the Teamsters. But the Court of Appeals, in their opinion, indicated that a reviewing court "will not strike down an otherwise constitutional statute on the basis of an allegedly illicit legislative motive. *United States v. O'Brien*, 391 U.S. 367, 383 (1968)." And as stated there was a rational basis for the City's action.

4. The Alleged Differentiation Between Petitioner and Other Applicants Has Not Deprived Petitioner of Due Process.

The franchise under which Yellow Cab was operating had a specific date of expiration. The franchise did not provide for any renewal. The Los Angeles City Charter provides in part;

> "The City *may*, by ordinance . . . grant to the holder of such franchise a new franchise to replace such franchise about to expire". See Opinion of Court of Appeals, Petition, Appendix A, page 4. (Emphasis added.)

As to taxicab operations the California Court of Appeal has stated;

> "There is no vested or constitutional right to use a public street for conducting private business. (cite) A license or permit to engage in the taxicab business, issued by the city pursuant to it police power, does not convey a vested property right". *O'Connor v. Superior Court*, 90 Cal.App.3d 107, 114(4); 153 Cal.Rptr. 306 (1979).
>
> "The use of streets by taxicabs is a privilege that may be granted or withheld without violating either due

> process or equal protection. This privilege may be granted exclusively or nonexclusively to render public service." *Luxor Cab Co. v. Cahill*, 21 Cal.App.3d 551, 558(7); 98 Cal.Rptr. 576 (1971).

In the case of *Geriatrics, Inc. v. Harris*, 640 F.2d 262 (10th Cir. 1981) the district court had granted a preliminary injunction for the plaintiff nursing home against the Federal Department of Health, Education, and Welfare, and also against the Colorado State Department of Health from terminating medical funding of the nursing home prior to a hearing to ascertain whether or not the home had complied with Federal and State regulations. The Court of Appeals reversed stating:

> "A protectable property interest must be an interest secured by a statute or legal rule or through a mutually explicit understanding." p. 264(2).

The Court of Appeals, in its decision, determined that Yellow Cab did not have such an interest. Petition, Appendix A, page 5.

Yellow Cab makes reference to the case of *Hornsby v. Allen*, 326 F.2d 604 (5th Cir. 1964) wherein there was a denial of a liquor license to a party who had alleged that he had met all of the prescribed standards for the issuance of such a license. In that case, however, there were prescribed legislative standards, which, if met, entitled one to the issuance of the license. There were no such standards in this case which, if met, entitled one to a new franchise replacing an expiring taxicab franchise. The *Hornsby* court also pointed out that there was no suggestion that the sale of retail liquor in Georgia was "a public business which can be franchised by the State and treated as devoted to a public use. Page 609(9, 10). In the present matter, as has been stated, taxicab operations is a business devoted to a public use and is franchised by the City and is a "privilege"

which "may be granted exclusively or nonexclusively to render public service". *Luxor Cab Company v. Cahill, supra.*

Conclusion.

There is no serious question raised by the petition. The action involved here was the City's refusal to grant an applicant a new franchise replacing an expiring one. The City, within the discretion it had pursuant to its police power, was not obligated to grant this new franchise merely because the particular applicant was involved in a labor dispute. This case has its own particular set of facts distinguishable from those cases cited by petitioner, wherein a state or local entity gratuitously interjected itself into a labor dispute, acting when there was no need to act. Here the City was acting because the applicant had asked it to act on its application to the City for a new franchise.

The Court of Appeals recognizes that the use of streets and highways is a traditionally local matter left to state and local regulation under the police power and that the courts will not interfere with a legislative action if there is any set of facts which reasonably may be conceived to justify an alleged differential treatment. The decision further recognized that the petitioner in this matter did not have a constitutionally protected property interest. There was no serious questions with respect to the claims of violations of equal protection guarantees and procedural due process.

The Court of Appeals' decision in this case turns upon the particular facts involved and would appear to affect few

others than the litigants in this case. For the reasons stated above, the petition for writ of certiorari should be denied.

Dated: November 29, 1982.

Respectfully submitted,

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